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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 198

ISADORE M. KRACHOCK,

Appellant,

vs.

DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

STATEMENT OPPOSING JURISDICTION

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STATEMENT MAKING IN OPPOSITION TO THIS COURT'S JURISDICTION

The considerations suggested in this Statement in Opposition to this Court's jurisdiction demonstrate that the Illinois Supreme Court's judgment presently appealed from rests upon grounds of State procedure that are independent of the grounds which appellant asserts deprive him of due process.

Therefore, under familiar axioms defining this Court's jurisdiction, it lacks jurisdiction to entertain this cause either on appeal or on *certiorari*.

I

The Illinois Supreme Court's Judgment Rests Upon Grounds of State Law Adequate to Support It and Independent of Its Pronouncement Sought to Be Reviewed Here.

Where a State court states several concurrent and independent grounds for its judgment, this Court lacks jurisdiction to review if any of those grounds consists solely in State law and are adequate to support the judgment. *Radio Station WOW* v. *Johnson*, 326 U. S. 120; *United States* v. *Hastings*, 296 U. S. 188; *Fox Film Corp.* v. *Mueller*, 296 U. S. 207.

In this case Illinois' Department of Revenue refused appellant a motor fuel distributor's license because, so the Department declared, appellant was indebted to it on account of an unpaid tax liability of some years standing. Appellant conceded that under applicable Illinois statutes such indebtedness would be a ground for refusal of a license but contended that there was in fact no such antecedent tax liability extant.

Judicial investigation of appellant's assertion of nonliability has indeed been denied by the Illinois courts. But a reading of the Illinois Supreme Court's opinion disclosed that such denial has been predicated upon the grounds that:

> (1) Appellant sought to prosecute this proceeding "without bringing before the Court, or requiring to be brought before the Court, the record of the Department of Revenue" upon which that Department presumably based its rejection of appellant's application for a motor fuel distributor's license. Under Illinois law it is incumbent upon one seeking administrative review not only to request *but to procure* a record of administrative action sought to be assailed on statutory proceedings in the nature of a writ of *certiorari*. The record is called the "return of the writ".

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If the agency refuses to file the return, the citizen's remedy is neither to default the agency nor to substitute evidence *de hors* the administrative record for the record itself, but is to compel, by proceedings for contempt of court, if necessary the production of the administrative record whose physical presence before the reviewing court is prerequisite to that court's jurisdiction. *Murphy* v. *Cuesta, Rey & Co.*, 381 Ill. 162.

(2) Appellant's complaint in the trial court did not state a cause of action, an objection which, under Illinois law, "may be raised at any time either before of after judgment."

(3) The Department of Revenue is an arm of the State and may not be sued because the Constitution of Illinois provides that "the State shall never be made a defendant in any court of law or equity". (Article IV, Sec. 26.)

Even if the third ground above stated, viz., the Illinois Supreme Court's declaration that the State can not be sued be deemed to embody a decision of a substantial Federal question with respect to the constitutionality of Illinois' Civil Administrative Review Act and her constitutional inhibition of suits against the State, it is apparent that this third ground is cumulative and wholly collateral to the ground that appellant did not observe Illinois permissible modes of procedure when he failed to produce or cause to be produced the administrative record sought to be reviewed.

Therefore the Illinois court's judgment rests upon an independent ground of State procedure adequate to support it and this court would lack jurisdiction to review the Federal question sought to be raised by appellant even if that question were present and substantial.

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Conclusion

For the reasons suggested in this Statement in Opposition to this Court's jurisdiction, it is respectfully submitted that the Illinois Supreme Court's decision rests upon adequate non-Federal grounds, independent of the alleged Federal questions sought to be presented, and that therefore this Court lacks jurisdiction of this case either on appeal or on *certiorari*.

Respectfully submitted,

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